A

Roslan bin Husain v Public Prosecutor

B

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO P-05–435 OF 2010
ABU SAMAH, AZAHAR MOHAMED AND ZAWAWI SALLEH JJCA
5 JULY 2013

C

Evidence — Dying declaration — Admissibility — Whether dying declaration properly admitted — Whether trial judge considered deceased's credibility before admitting statement — Whether witness to whom dying declaration was made gave acceptable reason for not disclosing declaration to others besides police — Whether circumstantial evidence showed accused was responsible for crime

D

The appellant ('accused') was convicted and sentenced to death by the High Court for murdering a man ('the deceased') in a paddy field one night in March 2008. PW8, who was one of two villagers who found the deceased grievously hurt and in a sitting position in the paddy field half-submerged in water, told police the deceased had told him he was attacked by 'Lan Chin Gula', which was the accused's nickname. The deceased had also told PW8 to hand over the money which was kept in a basket on his motorcycle, which was lying nearby, to the deceased's wife. PW8 could not find any money in the basket. Villagers sent the deceased to hospital but he was pronounced dead on arrival. An autopsy showed he had died of multiple slash wounds. Police arrested the accused in his house and found RM9,000 from under his bed. The deceased had withdrawn the same amount from his bank before his murder. The accused led police to the recovery of a *parang* not far from his house. Traces of the deceased's blood were found not only on the parang but also on the handle of the accused's motorcycle. In his instant appeal against conviction and sentence the accused contended that the trial judge should not have admitted the deceased's dying declaration to PW8 especially as PW8 failed to disclose it to anyone at the earliest available opportunity. The accused also said there was no evidence to connect him with the *parang*. In his defence at the trial the accused had made an unsworn statement from the dock claiming he was sleeping at home when the murder took place.

E

F

G

H

Held, dismissing the appeal:

I

(1) The evidence showed that PW8 did relay the dying declaration on the identity of the deceased's assailant to Supt Haji Mohd Shukri bin Haji Awang. PW8 had also explained why he decided against telling the villagers of the dying declaration when he had the opportunity to do so. Based on that evidence, the accused could not complain that the dying declaration was doubtful because PW8 did not disclose it to anyone. The

record showed that the trial judge had directed his attention to the deceased's credibility and held that the voice from beyond the grave spoke the truth (see paras 36–38).

(2) The composite picture presented, when the circumstantial evidence was considered together with the dying declaration, proved the nexus and linked the appellant to the murder (see para 41).

(3) The chemist confirmed that the blood stain on the parang contained the deceased's DNA and that the blood on the handle of the appellant's motorcycle contained mixed DNA of both the appellant and the deceased. The above cumulatively connected the appellant to the murder. The inferences drawn from the evidence of the appellant's conduct remained unrebutted as the appellant failed to explain them pursuant to s 9 of the Evidence Act 1950 (see paras 30–31).

(4) The trial judge did give the accused's defence his most earnest consideration before concluding that it did not raise a reasonable doubt on the prosecution's case. The judge gave very cogent reasons for convicting the appellant and there was no reason to disagree with his verdict. Indeed, there was sufficient evidence to show the appellant committed the murder (see paras 44 & 46).

[Bahasa Malaysia summary

Perayu ('tertuduh') disabitkan dan dihukum mati oleh Mahkamah Tinggi kerana membunuh seorang lelaki ('si mati') di sawah suatu malam di bulan Mac 2008. PW8, salah seorang daripada dua penduduk kampung menjumpai si mati cedera parah dan berada dalam keadaan duduk di sawah separuh tenggelam, memberitahu polis si mati telah memberitahu dia yang dia telah diserang oleh 'Lan Chin Gula', yang mana adalah nama julukan tertuduh. Si mati juga memberitahu PW8 untuk memberikan wang yang disimpan di dalam raga motosikal, yang terbaring bersebelahan, kepada isteri si mati. PW8 tidak dapat menjumpai apa-apa wang di dalam raga tersebut. Penduduk-penduduk kampung menghantar si mati ke hospital tetapi dia telah disahkan meninggal dunia apabila tiba di hospital tersebut. Autopsi menunjukkan yang dia meninggal dunia akibat pelbagai luka dikelar. Polis menangkap tertuduh di rumahnya dan menjumpai RM9,000 di bawah katilnya. Si mati telah mengambil jumlah yang sama daripada bank sebelum pembunuhannya. Tertuduh membawa polis kepada penemuan parang tidak jauh daripada rumahnya. Kesan darah si mati dijumpai bukan sahaja pada parang tetapi juga pada pemegang motosikal tertuduh. Dalam rayuannya ini terhadap sabitan dan hukuman tertuduh berhujah bahawa hakim perbicaraan tidak patut memasukkan akuan nazak si mati kepada PW8 terutamanya kerana PW8 gagal untuk memberitahu kepada sesiapa pada peluang terawal yang sedia ada. Tertuduh juga menyatakan tidak terdapat keterangan untuk menghubungkan dia dengan parang. Dalam pembelaannya semasa

perbicaraan tertuduh telah membuat pernyataan dengan tidak mengangkat sumpah dari kandang tertuduh dengan mendakwa yang dia sedang tidur di rumah semasa pembunuhan tersebut berlaku.

Diputuskan, menolak rayuan:

(1) Keterangan menunjukkan bahawa PW8 telah menyampaikan akuan mati mengenai identiti penyerang si mati kepada Supt Haji Mohd Shukri bin Haji Awang. PW8 juga telah menjelaskan mengapa dia memutuskan daripada memberitahu penduduk-penduduk kampung mengenai akuan nazak tersebut apabila dia mempunyai peluang berbuat demikian. Berdasarkan keterangan, tertuduh tidak dapat mengadu yang akuan nazak tersebut adalah meragukan kerana PW8 tidak memberitahunya kepada sesiapapun. Rekod menunjukkan bahawa hakim perbicaraan telah mengarahkan perhatiannya kepada kredibiliti si mati dan memutuskan bahawa si mati bercakap benar (lihat perenggan 36–38).

(2) Gambaran komposit menunjukkan, apabila keterangan keadaan dipertimbangkan bersama dengan akuan nazak, membuktikan hubungan dan mengaitkan perayu kepada pembunuhan tersebut (lihat perenggan 41).

(3) Ahli kimia mengesahkan bahawa kesan darah pada parang mengandungi DNA si mati dan bahawa darah pada pemegang motosikal perayu mengandungi DNA campuran kedua-dua perayu dan si mati. Perkara di atas secara kumulatif menghubungkan perayu kepada pembunuhan tersebut. Inferens yang dapat diambil daripada keterangan mengenai tingkah laku perayu kekal tidak dipatahkan memandangkan perayu gagal untuk menjelaskan ia berikutan s 9 Akta Keterangan 1950 (lihat perenggan 30–31).

(4) Hakim perbicaraan telah memberikan pertimbangan penuhnya kepada pembelaan tertuduh sebelum memutuskan yang ia tidak membangkitkan keraguan munasabah ke atas kes pihak pendakwaan. Hakim memberikan alasan-alasan yang jelas untuk menyabitkan perayu dan tidak terdapat alasan untuk tidak bersetuju dengan keputusannya. Sudah tentu, terdapat keterangan yang mencukupi untuk menunjukkan perayu telah melakukan pembunuhan tersebut (lihat perenggan 44 & 46).]

Notes

For cases on admissibility, see 7(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 1582–1591.

Cases referred to

Amathevelli a/p P Ramasamy v PP [2009] 3 MLJ 367; [2009] 3 CLJ 109, FC (refd)

Chan Phuat Khoon v PP [1962] MLJ 127b, CA (refd)
Ganapathy a/l Rengasamy v PP [1998] 2 MLJ 577, FC (refd)
Pakala Narayana Swami v King-Emperor [1939] 1 MLJ 59, PC (refd)
Parlan bin Dadeh v PP [2008] 6 MLJ 19; [2009] 1 CLJ 717, FC (refd)
PP v Shariff Kadir [1997] MLJU 158; [1997] 5 CLJ 463, HC (refd)
Tay Kok Wah v PP [2012] 4 MLJ 502; [2012] 3 AMR 347, CA (refd)
Teuku Nawardin Shamsuar v PP [2011] MLJU 249; [2011] 3 CLJ 353, CA (refd)

Legislation referred to
Evidence Act 1950 ss 8(2), 9, 27, 32(1)(a)
Penal Code s 302

Appeal from: Criminal Trial No 45–7 of 2009 (High Court, Pulau Pinang)

Simon Murali (Lio & Partners) for the appellant.
Mangairkarasi a/p Krishnan (Attorney General's Chambers) for the respondent.

Zawawi Salleh JCA (delivering judgment of the court):

THE ANTECEDENTS

[1] This is an appeal against the judgment of the High Court Penang dated 19 November 2010, convicting the appellant on one count of the offence of murder under s 302 of the Penal Code, for which he was sentenced to death.

[2] The charge against the appellant reads as follow:

> Bahawa kamu pada 23 Mac 2008 jam lebih kurang 8.45 malam, di Jalan Mini Tar yang berhampiran gudang 'Mighty Noble', di Kampung Air Hitam, Sungai Dua, di dalam Daerah Seberang Perai Utara, di dalam Negeri Pulau Pinang, telah membunuh seorang lelaki Melayu bernama Jasni bin Hamid (No. K/P: 580810-02-5077). Oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

[3] The appellant appeals against his conviction and sentence. Having considered the evidence and submissions of both parties, we found no merits in this appeal. We dismissed the appeal and affirmed the conviction and sentence imposed by the High Court.

THE BRIEF FACTS

[4] The facts of the case, as culled from the appeal records, may be summarised thus: on 23 March 2008, at around 9pm, Mohd Soffie bin Mohd

Zaki ('PW7') heard a screaming sound. He went out of his house and saw a flickering light from a distance of 200 metres from the house, the spot from where the noise apparently came.

[5] PW7 proceeded to a tarred pathway, which cuts across a paddy field. He met Rosman bin Din ('PW8') who was walking along the pathway.

[6] Both PW7 and PW8 then found a motorcycle which had fallen on the ground. The flickering light apparently came from the motorcycle's indicator.

[7] Both men switched on the motorcycle's headlamp and directed the light towards the paddy field. They saw the deceased in a sitting position, where the lower part of his body was submerged in the water of the paddy field.

[8] They approached the deceased and noticed the latter was grievously hurt. PW7 ran off to a nearby mosque to seek help while PW8 stayed with the deceased.

[9] PW8 asked the deceased who did this to him, in which the deceased answered 'Lan Chin Gula'. Lan Chin Gula was the appellant's nickname.

[10] PW8 then proceeded to Hassan bin Saad's ('PW9') house and told him that the deceased was in need of help. Both men returned to the scene to tend to the deceased.

[11] At that point of time, the deceased was lying sprawled on the edge of the tarred pathway. The deceased told PW8 that the money kept inside his motorcycle basket was to be given to his wife. PW8 later found that there was no such money in the motorcycle basket.

[12] The villagers who arrived with Mat Sapak bin Adam ('PW10') carried the deceased to a car and rushed him to the Seberang Jaya Hospital.

[13] The deceased was pronounced dead upon arrival at the hospital. Autopsy on the deceased's body was performed by Dr Bhupinder Singh ('PW13'). The pathologist confirmed that the deceased's death was a result of multiple slash wounds.

[14] The appellant was later arrested at his house. A sum of RM9,000 was found under the appellant's bed. The appellant then led Superintendent Hj Mohamad Sukri bin Awang ('PW16') and a few other policemen to a spot not far from his house where a 'parang' was found.

[15] At the close of the prosecution case the appellant was called to enter his defence.

[16] During the defence case, the appellant gave a statement from the dock and he did not call other witnesses. The learned trial judge, after an exhaustive review of the evidence, found the appellant guilty beyond reasonable doubt of the offence charged and accordingly, as stated above, sentenced him to death.

THE GROUNDS OF APPEAL

[17] Before us, the appellant raised several grounds to impugn the learned trial judge's decision. We have taken the liberty to consolidate them under three main headings as follows:

(a) the learned trial judge had misdirected himself when His Lordship failed to rule that there was a break in the chain of evidence relating to the blood specimen taken from the appellant and the deceased;

(b) the learned trial judge had misdirected himself when His Lordship failed to consider that there was no connection between the 'parang' and the appellant; and

(c) the learned trial judge had misdirected himself when His Lordship admitted the dying declaration in isolation without considering the entire surrounding circumstances under which the deceased made the statement.

[18] We will consider the issues raised by the appellant in turn.

Ground (a): The chain of evidence of the blood specimen taken

[19] It is not disputed that the FTA card stained in blood specimen with a label bearing the deceased's name (exh P69A) and a plastic tube containing blood specimen with a label bearing the appellant's name (exh P67A) were sent to the chemist, Erizasyira bt Basri ('PW23'), for analysis.

[20] Learned counsel's main complaint on this issue is that the learned trial judge erred when His Lordship failed to rule that there was a break in the chain of evidence of the blood specimens taken. The case *Tay Kok Wah v Public Prosecutor* [2012] 4 MLJ 502; [2012] 3 AMR 347 was cited in support of his contention.

[21] With respect, the facts in *Tay Kok Wah* are far cry from the case in hand. In that case, the blood samples were taken by three different doctors and they were not identified. Further, there was also no evidence as to the movement of

A the blood samples from the moment they were taken by the unidentified doctors to the point when they were handed over to the investigation officer.

[22] In the present case, in the report ('exh P21') prepared by the pathologist, PW13 clearly confirmed that he collected the deceased's blood specimen in the
B form of FTA card for DNA profiling and gave it to the police officer. ASP Norhayati bt Ahmad ('PW4') also testified that she received the specimen from PW13.

[23] PW4 further testified that the appellant was taken to Hospital Seberang
C Jaya and Dr Mohd Shahir bin Mohd Hassan attended to the appellant. The appellant's blood specimen ('exh P67A') was handed over to PW4. PW4 testified that she sent 30 items (including exhs P67A and P69A) to PW23.

[24] The movement of the blood specimens were clearly explained.
D Dr Shahir bin Mohd Hassan was also offered to the defence at the close of prosecution case.

[25] Therefore, it is our finding that there is no infirmity in the collection of
E the appellant's and the deceased's blood specimens. This ground of appeal is bereft of merit.

Ground (b): Recovery of the parang

F **[26]** The second ground of appeal relates to the recovery of P47A, the 'parang', from a spot near the appellant's house pursuant to the information given by the appellant to PW16 which was recorded by him in Laporan Polis Sg Dua 662/08 (ID29).

G **[27]** The learned trial judge had concluded that both the oral evidence of the information given by the appellant to PW16 and the record of the information in ID29 were inadmissible under s 27 of the Evidence Act 1950 as the threshold under that section is not circumvented.

H **[28]** We are of the opinion that quite distinct and apart from s 27 of the Evidence Act 1950, the appellant's conduct in leading PW16 to the discovery of 'parang' is relevant under s 8(2) of the Evidence Act 1950.

I **[29]** Authorities on this proposition of law are legion. For the purpose of this judgment, we would like to refer to the case of *Amathevelli a/p P Ramasamy v Public Prosecutor* [2009] 2 MLJ 367; [2009] 3 CLJ 109, wherein Arifin Zakaria CJ (Malaya) (as His Lordship then was) had this to say:

As Chinnappa Reddy J said in *Prakash Chand v State* AIR SC 400 at p 404:

> The evidence of the circumstances, simpliciter, that an accused person led a police officer and pointed out the place where stolen articles or weapon which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under s 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously will or antecedent to such conduct falls within the purview of s 27 of the Evidence Act (vide *Himachal Pradesh Administration v Om Prakash* AIR 1972 SC 975).

(See also *Bala anak Matik v Public Prosecutor* [2006] 3 MLJ 516)

[30] The learned trial judge had indeed appraised the appellant's conduct and found them to be relevant and admissible under s 8(2) of the Evidence Act 1950. PW23 confirmed that the blood stain found on the 'parang' contained the deceased's DNA. The blood specimen found on the handle of the appellant's motorcycle also contained mixed DNA of both the appellant and the deceased. All the above cumulatively connect the appellant to the murder of the deceased.

[31] The inferences drawn from the evidence of conduct of the appellant remain unrebutted as the appellant has not explained them pursuant to s 9 of the Evidence Act. As Augustine Paul FCJ said in the judgment of *Parlan bin Dadeh v Public Prosecutor* [2008] 6 MLJ 19; [2009] 1 CLJ 717:

> If the explanation is accepted by the court then the inference arising from the conduct is rebutted. If it is not accepted or if the accused does not explain his conduct the inference remains unrebutted.

[32] It is clear, therefore, that the act of pointing out the 'parang' by the appellant is one of the circumstances which linked him with the offence charged.

Ground (c): The admissibility of the dying declaration

[33] Learned counsel for the appellant challenges the admissibility of the dying declaration made by the deceased to PW8 on the ground that PW8 failed to disclose it to anyone at the earliest available opportunity.

[34] PW8's testimony of his encounters with the deceased merits reproduction as follows:

> Saya tanya pada Awang, 'Hang pasai apa? Jatuh motor ka?' Tetapi mangsa menyatakan kepada saya beliau diserang dan ditetak. Saya tanya pada mangsa, 'siapa yang buat?' Dia kata 'Lan Chin Gula, Lan Chin Gula', sebanyak 2 kali.

> Saya tanya kepada mangsa - 'Hang jangan main-main - ini kes polis'. Mangsa tetap kata yang 'Lan Chin Gula tetak aku'. Seterusnya saya kata 'Hang tunggu sat, aku nak pergi panggil orang'. Saya pergi ke rumah Abang Chan, tetapi kepada Abang Chan, saya tak menyatakan bahawa Awang ditetak. (See appeal record, vol 1, p 78)
>
> 'Bila lihat banyak kesan cedera, saya tanya sekali lagi pada mangsa, mangsa masih boleh berkata-kata walaupun dalam keadaan lemah. Saya kata betulkah Lan Chin Gula tetak hang?' Mangsa jawab, 'Ya dan hang tolong tengok dalam raga motor aku, ada tak duit -kalau ada tolong bagi kat bini aku'. Selepas itu saya pergi ke arah mangsa dan pada masa yang sama Abang Chan pun sampai. Saya bagi tahu Abang Chan, 'saya nak pi tengok duit dalam raga motor'. Saya dapati yang duit yang dimaksudkan itu tak ada. Motor itu masih terbalik. Dalam raga tak ada. Di sekeliling motorsikal juga tak ada.
>
> Seterusnya dari tempat motor itu, saya menjerit kepada Abang Chan, duit tak ada …'. (See appeal record, vol 1, p 78)

[35] We are of the opinion that this statement by the deceased attracts the application of s 32(1)(a) of the Evidence Act 1952. Under s 32(1)(a), the maker of a statement who is dead and the statement in the form of a dying declaration as to the cause of his death or circumstances of the transaction which resulted in his death are relevant and admissible. Of course, the circumstances must have some proximate relation to the actual occurrence (see *Pakala Narayana Swami v King-Emperor* [1939] 1 MLJ 59).

[36] The evidence shows that PW8 did relay the dying declaration on the identity of his assailant to Supt Hj Mohd Shukri bin Hj Awang ('PW16'). PW8 also explained why he decided against telling the villagers of the dying declaration when he had the opportunity to do so:

> … saya tak beritahu tentang perkara ini sebab pada masa itu, sukar untuk saya terima kenyataan itu sebab saya juga kenal OKT. Pernah sama-sama main bola dan karekter beliau di kampong, beliau dan segi masyarakat - dia amat baik. Atas hal ini, saya perlu masa untuk mengiyakan apa yang dikatakan oleh mangsa. (See appeal record, vol 1, p 82)

[37] Based on the above evidence, it does not lie in the mouth of the learned counsel to complain that the dying declaration was doubtful because PW8 did not disclose it to anyone.

[38] Learned counsel further submitted that learned trial judge failed to address his mind on the accuracy and veracity of the statement. With respect, we cannot subscribe to this aspect of the learned counsel's submission. We are aware that it is essential that the court assesses the credibility of the deceased before relying on the statement made by him (see *Chan Phuat Khoon v Public Prosecutor* [1962] MLJ 127b). In this regard, we have carefully scrutinised the

records and find that the learned trial judge had in his judgment at pp 31–32 of the appeal record, directed his attention to the deceased's credibility and held that the voice from beyond the grave speak the truth.

[39] It is important to note that there are also circumstantial evidence linking the appellant with the murder. The circumstantial evidence relied by the prosecution may be summarised as follows:

(a) traces of the deceased's blood was found on handle of the appellant's motorcycle;

(b) the deceased withdrew RM9,000 from his bank account prior to the incident;

(c) the recovery of RM9,000 under the appellant's bed;

(d) the appellant led the police to the discovery of the 'parang';

(e) traces of the deceased's blood was found on the 'parang'; and

(f) PW13's testimony that the 'parang' could have caused the slash wounds.

[40] The learned trial judge also considered the appellant's conduct in disposing the 'parang' and soaking the clothes in detergent as a deliberate attempt by the appellant to cover-up his crime.

[41] The composite picture presented, when the circumstantial evidence considered together with the dying declaration, proved the nexus and linked the appellant to the crime charged.

THE EVALUATION OF DEFENCE

[42] In the present appeal, the appellant gave unsworn statement from the dock and no other witness was called for the defence. The legal position on unsworn statement from the dock has been explained in the case of *Teuku Nawardin Shamsuar v Public Prosecutor* [2011] MLJU 249; [2011] 3 CLJ 353, where the Federal Court held as follows:

> [15] In the present appeal the appellant had chosen to furnish an unsworn statement from the dock and no other witness was called for the defence. The decision in *Mohammed Salleh v Public Prosecutor* [1968] 1 LNS 80 is useful. In the words of Wee Chong Jin CJ:
>
> > In our judgment, the right of an accused at his trial on a criminal charge to make an unsworn statement from the dock is not a procedural right but a substantive right of an accused and accordingly does not depend on whether or not there is a specific provision for it in the Criminal Procedure Code. It seems to us beyond doubt that under our system of administration of justice, and it has been so

A throughout the entire history of our courts, a person accused of a criminal offence before an established court of justice has at his trial, as part of his defence, the right to make an unsworn statement from the dock if he wishes to do so. In our view this right can be taken away only by an express statutory provision to that effect.

B With regard to the question of prejudice arising out of the trial judge's comment on the probative value of the unsworn statement of the appellant, we are of the opinion that it is proper for a judge in summing up to remind the jury that a statement from the dock is not sworn evidence which can be the subject of cross-examination; that they can attach to it such weight as they think fit and that they should take it into consideration in deciding whether the prosecution have

C proved their case.

[43] In *Public Prosecutor v Shariff Kadir* [1997] MLJU 158; [1997] 5 CLJ 463, Mohd Hishamudin Yunus J (as His Lordship then was) held as follows:

D Since as a matter of law, an accused person cannot be cross-examined on his unsworn statement made from the dock, such a statement cannot carry the same weight as evidence given in the witness-box under oath. The weight that should be given to such a statement must be such weight as the judge thinks fit.

E

[44] What the appellant had said in his unsworn statement is in essence that he did not commit the alleged crime as he was sleeping at his home at the material time. Notwithstanding the discernible incredulity in the defence versions rendered, the learned trial judge gave the versions its most earnest

F consideration before coming to a conclusion that the defence of the appellant did not raised a reasonable doubt on the prosecution's case.

[45] We find the approach of the learned trial judge on this part of the case to be in accordance with the principle laid down by the Federal Court in the

G case of *Ganapathy a/l Rengasamy v Public Prosecutor* [1998] 2 MLJ 577:

It needs to be remembered that however weak a defence may be, trial judges being judges of both fact and law should not just brush aside the defence on the basis that the prosecution witnesses are to be believed and not the defence. Where the law cast the onus of giving an explanation upon an accused person, and the explanation is

H given, which if consistent with innocence, the court is duty bound to consider whether it might reasonably be true, although not convinced of its truth. On the issue of the court's duty to consider the defence, the age-old decision in *Mat v Public Prosecutor* [1963] MLJ 263 is still good law today as it was then. This was followed by the Supreme Court in *Mohamad Radhi bin Yaakob v Public Prosecutor* [1991] 3

I MLJ 169.

THE CONCLUSION

[46] In our opinion, the learned trial judge had given very cogent reasons for

convicting the appellant, and we see no reason to disagree with his verdict. Indeed, there is sufficient evidence to show that the appellant committed the offence charged.

[47] For all the reasons given above, we find no merit in this appeal and it is therefore dismissed. The conviction and death sentence imposed on the appellant by the learned trial judge is affirmed.

Appeal dismissed.

Reported by Ashok Kumar